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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARICK DABISH,
Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

INFINITELABS, LLC,

Defendant.

Case No. '13CV2048 BTM DHB

**CLASS ACTION
COMPLAINT**

1. VIOLATIONS OF
BUSINESS & PROFESSIONS
CODE SECTION
17200 ET SEQ.

2. VIOLATIONS OF
CALIFORNIA CIVIL CODE
SECTION 1750 ET SEQ.

3. VIOLATIONS OF THE
FALSE ADVERTISING
LAW, CALIFORNIA
BUSINESS & PROFESSIONS
CODE SECTION 17500 ET
SEQ.

4. BREACH OF EXPRESS
WARRANTY

**DEMAND FOR JURY
TRIAL**

CLASS ACTION COMPLAINT

NOW COMES Plaintiff DARICK DABISH, (“Plaintiff”), by and through his attorneys SEEGER WEISS LLP, individually and on behalf of all others similarly situated, alleges the following:

NATURE OF THE ACTION

1. This is a civil class action brought individually by Plaintiff and on behalf of a class of persons similarly situated, (“Class Members”), who purchased the dietary supplement Infinite Labs Pro Tribulus (the “Product”) from Defendant.
2. The class members are all persons located within the state of California and the United States who purchased the Product.
3. Defendant advertises, manufactures, markets, sells and distributes the Product.
4. Bodybuilding.com (“BB”) is an online retailer of the Product.
5. Defendant provides BB, along with numerous other online retailers, with the advertising and marketing language for the Product, as well as the label images.

- 1 6. The dietary supplement industry is a growing and extremely competitive
2 business environment, especially the sports (bodybuilding) supplement
3 segment.
4
- 5 7. Most companies in this segment distort, if not totally ignore, competent and
6 reliable scientific data regarding their products and ingredients.
7
- 8 8. The Product is generally categorized as a “Testosterone Boosting/Muscle
9 Building” product and contains the sole ingredient Tribulus Terrestris
10 (“TT”).
11
- 12 9. TT is a flowering plant in the family Zygophyllaceae, native to warm
13 temperate and tropical regions of southern Europe, southern Asia,
14 throughout Africa, and Australia. It is a taprooted herbaceous perennial
15 plant that grows as a summer annual in colder climates.
16
- 17 10. TT is used as a nutritional supplement, but is highly debated regarding its
18 physiological and actual effects, which are claimed to be an increase in the
19 activation of endogenous testosterone production.
20
- 21 11. The active compounds in TT are called steroidal saponins. Two types,
22 called furostanol glycosides and spirostanol glycosides, appear to be
23 involved with the effects of TT. These saponins are found primarily in the
24 leaf. In addition, protodioscin is a steroidal saponin compound and also acts
25 as a putative active component of TT. Extracts from TT standardized for
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protodioscin content have been demonstrated to produce pro-erectile effects in isolated tissues and aphrodisiac action in several animal species¹.

12. This extract has also been shown to produce statistically significant increases in the levels of the hormones testosterone, dihydrotestosterone, and dehydroepiandrosterone in animal studies², but studies in humans have failed to show efficacy and its use remains controversial³.

13. Tribulus Terrestris is most often used for infertility, erectile dysfunction, and low libido; however, in the last decade, it has become popular to improve sports performance.

14. The extract is claimed to increase the body's natural testosterone levels and thereby improve male sexual performance and help build muscle.

15. Therefore, TT has been marketed on this premise because initial research performed indicated TT to increase levels of the hormones, testosterone (by

¹ See Gauthaman K, Adaikan P, Prasad R. Aphrodisiac properties of Tribulus Terrestris extract (Protodioscin) in normal and castrated rats. *Life Sci.* 71:1385-96, 2002.; See also Gauthaman K, Ganesan A, Prasad R. Sexual effects of puncturevine (*Tribulus terrestris*) extract (protodioscin): an evaluation using a rat model. *J Alt Comp Med*, 9:257-65, 2003.

² Gauthaman K, Ganesan A. The hormonal effects of Tribulus terrestris and its role in the management of male erectile dysfunction—an evaluation using primates, rabbit, and rat. *Phytomedicine*, 15:44-54, 2008.

³ See Rowland D, Tai W. A review of plant-derived and herbal approaches to the treatment of sexual dysfunctions. *J Sex Mar Ther*, 29:185-205, 2003; See also McKay D. Nutrients and botanicals for erectile dysfunction: examining the evidence. *Alt Med Rev*, 9:4-16, 2004.

1 increasing luteinizing hormone), DHEA, and estrogen. However, the design
2 of these research studies has been questioned.

3 16. Furthermore, more recent, relevant, and placebo-controlled studies
4 involving TT and resistance training in humans have demonstrated that TT
5 failed to increase testosterone levels or demonstrate increases in muscle
6 mass or strength⁴.
7

8
9 17. Defendant uses several false, fraudulent, misleading, unfair and deceptive
10 claims on the label of the Product.

11 18. Defendant uses several false, fraudulent, misleading, unfair and deceptive
12 claims at the point of purchase for the Product on their website
13 www.infinitelabs.com. (Exhibit A).
14

15 19. Defendant uses several false, fraudulent, misleading, unfair and deceptive
16 claims at the point of purchase for the Product on BB's website
17 www.bodybuilding.com. (Exhibit B).
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21
22 ⁴ See Antonio J, Uelmen J, Rodriguez R, Earnest C. The effects of Tribulus
23 terrestris on body composition and exercise performance in resistance-trained
24 males. Int J Sport Nutr Exerc Metab, 10:208-15, 2000.; See also Rogerson S,
25 Riches C, Jennings C, Weatherby R, Meir R, Marshall-Gradisnik S. The effect of
26 five weeks of Tribulus terrestris supplementation on muscle strength and body
27 composition during preseason training in elite rugby league players. J Strength
28 Cond Res, 21:348-53, 2007.; See also Brown G, Vukovich M, Reifenrath T, Uhl
N, Parsons K, Sharp R, King D. Effects of anabolic precursors on serum
testosterone concentrations and adaptations to resistance training in young men. Int
J Sport Nutr Exer Metab, 10:340-59, 2000.

1 20. By Defendant's unfair, deceptive, fraudulent, unfair and misleading
2 practices, Plaintiff and Class Members have been unfairly deceived into
3 purchasing the Product.
4

5 21. Plaintiff brings this action challenging Defendant's claims relating to the
6 Product on behalf of himself and all others similarly situated, under
7 California's Unfair Competition Law, False Advertising Law, Consumer
8 Legal Remedies Act, and Breach of Express Warranty.
9

10 22. Plaintiff seeks an order compelling Defendant to (1) cease marketing the
11 Product using the misleading tactics complained of herein, (2) conduct a
12 corrective advertising campaign, (3) restore the amounts by which
13 Defendant has been unjustly enriched, and (4) destroy all misleading and
14 deceptive materials.
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16

17 **JURISDICTION AND VENUE**

18 23. This Court has jurisdiction over all causes of action asserted herein.
19

20 24. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1332(d), because
21 there are at least 100 Class Members in the proposed Class, the combined
22 claims of proposed Class Members exceed \$5,000,000 exclusive of interest
23 and costs, and at least one Class Member is a citizen of a state other than
24 Defendant's state of citizenship.
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1 25. Plaintiff will likely have evidentiary support after a reasonable opportunity
2 for further investigation or discovery regarding Defendant's sales of the
3 Product during the class period.
4

5 26. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part
6 of the events giving rise to the claims asserted herein occurred in this
7 District. Venue is proper pursuant to 28 U.S.C. § 1391(c) because
8 Defendant conducts substantial business in this District, has sufficient
9 minimum contacts with this District, and otherwise purposely avail
10 themselves of the markets in this District, through the promotion, sale, and
11 marketing of their Product in this District.
12
13

14 27. Defendant and other out-of-state participants can be brought before this
15 Court pursuant to state and federal law.
16

17 **THE PARTIES**

18 28. During the Class period, Plaintiff and Class Members purchased the Product
19 through BB's website www.bodybuilding.com and/or one of the many brick
20 and mortar and online retailers of Defendant's Product throughout the
21 United States. Plaintiff and Class Members suffered an injury in fact caused
22 by the false, fraudulent, unfair, deceptive and misleading practices set forth
23 in this Complaint.
24
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26 29. Plaintiff is a resident of the County of San Diego, State of California, and
27 the events set forth in this Complaint took place therein, who, on or about
28

1 May 2013, purchased the Product for his own use, and not for resale, from
2 BB's website.

3
4 30. Under information and belief Defendant Infinitelabs, LLC ("Infinite") is a
5 Florida Limited Liability Company who is authorized to do and, is in fact,
6 doing business in California, with its principal place of business located at
7 7208 Sand Lake Rd., Suite 208, Orlando, FL 32819.
8

9
10 **FACTUAL ALLEGATIONS**

11 31. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
12

13 32. Plaintiff Dabish reviewed the Product's label and marketing material prior
14 to purchasing the Product.

15 33. Plaintiff Dabish reasonably relied on the information provided by
16 Defendant when making the decision to purchase the Product.
17

18 34. Defendant's claims are false and misleading.

19 35. Defendant had access, but knowingly and/or recklessly ignored all
20 competent and reliable scientific evidence regarding the Product's ingredient
21 Tribulus Terrestris.
22
23
24

25 ***Defendant's Claims Regarding Tribulus Terrestris Enhancing Testosterone***
26 ***Production***
27
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36. Defendant makes the following false and misleading claims regarding TT's ability to enhance or increase testosterone production:

- a) "Advanced LH Production Support" (Exhibit A);
- b) "Support Natural Testosterone Production" (Exhibits A and B); and
- c) "Support LH Production" (Exhibits A and B).

Animal Studies

37. In a study in which castrated and intact male rats received three dose levels of TT (11, 42, and 110 mg/kg/day) or testosterone (as a positive control) for 7 and 28 days, respectively, TT was unable to stimulate androgen-sensitive tissues like the prostate and seminal vesicle in both castrated and intact rats⁵. In addition, none of the three doses of TT administered to intact rats for 28 days was shown to change serum testosterone levels as well as did not produce any qualitative change in the fecal excretion of androgenic metabolites. This study indicated that while TT had a slight effect in castrated rats with low physiological levels of testosterone, TT had no androgenic activity on intact, non-castrated rats (with normal physiological levels of testosterone).

⁵ Martino-Andrade A, Morais R, Spercoski K, Rossi S, Vechi M, Golin M, Lonbardi N, Greca C, Dalsenter P. Effects of Tribulis terrestris on endocrine sensitive organs in male and female Wistar rats. J Ethnopharmacol, 127:165-70, 2010.

38. In a study where TT was used to identify its usefulness of erectile dysfunction in rats⁶, intact rats received 2.5, 5, or 10 mg/kg/day of TT for 8 weeks. In addition, castrated rats were treated with either testosterone (10 mg/kg bi-weekly) or TT (5 mg/kg/day) for 8 weeks. There was no change in serum testosterone levels in intact rats with any dosage; however, in castrated rats (given 5 mg/kg/day), there was a significant increase of 25% (compared to 51% increase with testosterone-administered group).

Human Studies

39. A study was conducted to determine the influence of TT on androgen metabolism in young males. For 4 weeks, subjects underwent the daily oral ingestion of either placebo or TT at 10 mg/kg or TT at 20 mg/kg⁷. Results demonstrated there to be no significant difference in serum testosterone, androstenedione, or LH between the two TT doses, and that both TT doses were not different than placebo. This study indicates that TT steroid saponins possess neither direct nor indirect androgen-increasing properties.
40. A study conducted in men ages 30-59 provided a product containing alleged testosterone precursors (androstenedione, dehydroepiandrosterone, tribulis

⁶ Gauthaman K, Ganesan A. The hormonal effects of Tribulus terrestris and its role in the management of male erectile dysfunction—an evaluation using primates, rabbit, and rat. *Phytomedicine*, 15:44-54, 2008.

⁷ Neychev V, Mitev V. The aphrodisiac herb Tribulus terrestris does not influence the androgen production in young men. *J Ethnopharmacol*, 101:319-23, 2005.

1 terristeris, saw palmetto, and indole-3 carbinol, chrysin) daily for 4 weeks.

2 The daily amount of TT was 1.35 grams⁸. Results showed that total
3 testosterone levels were unchanged compared to placebo; however, free
4 testosterone, DHT, and estradiol levels were significantly increased. In
5 addition, the experimental herbal product did not prevent the conversion of
6 ingested androstenedione to estradiol and DHT. However, since TT is not
7 the only compound in this product, it becomes difficult to extrapolate these
8 results to only TT.
9
10

11 ***Defendant's Claims Regarding Tribulus Terrestris-Enhanced Testosterone***
12 ***Production Increases Muscle Mass***

13 41. Defendant makes the following false and misleading claims regarding TT's
14 ability to enhance or increase muscle mass:
15

16 A) "Increase Lean Muscle Naturally" (Exhibit A); and

17 B) "Growth and Recovery The Athlete's Performance Aid".
18
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21
22

23 ***Human Studies***
24
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26 ⁸ Brown G, Vukovich M, Martini E, Kohut M, Franke W, Jackson D , King D.
27 Effects of androstenedione-herbal supplementation on serum sex hormone
28 concentrations in 30- to 59-year-old men. Int J Vitam Nutr Res. 71:293-301, 2001.

1 42. In a study designed to determine the effects of TT on body composition and
2 exercise performance in resistance-trained college-age males, subjects were
3 randomly provided either a placebo supplement or TT (3.21 mg/kg/day) for
4 8 weeks in conjunction with a periodized resistance training program⁹.

5
6 Results demonstrated that there were no changes in body weight, percent fat,
7 total body water, dietary intake, or mood states in either group. Additionally,
8 muscle endurance and strength significantly increased for both groups, but
9 were not different from one another. This study indicates that 8 weeks of TT
10 supplementation did not enhance body composition or exercise performance
11 in resistance-trained males. The fact that there were no effects on training
12 adaptations helps refute the claim of TT having an anabolic and ergogenic
13 effect when combined with resistance training.
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16

17 43. A study attempted to determine the effects of TT on muscle strength, fat-
18 free mass, and the urinary testosterone/epitestosterone ratio during 5 weeks
19 of structured resistance training in elite male rugby players¹⁰. Subjects
20 randomly received either placebo or TT at a daily dose of 450 mg. After 5
21

22 ⁹ Antonio J, Uelmen J, Rodriguez R, Earnest C. The effects of Tribulus terrestris
23 on body composition and exercise performance in resistance-trained males. Int J
24 Sport Nutr Exerc Metab, 10:208-15, 2000.

25 ¹⁰ Rogerson S, Riches C, Jennings C, Weatherby R, Meir R, Marshall-Gradisnik S.
26 The effect of five weeks of Tribulus terrestris supplementation on muscle strength
27 and body composition during preseason training in elite rugby league players. J
28 Strength Cond Res, 21:348-53, 2007.

1 weeks of supplementation and training, muscle strength and fat-free mass
2 increased significantly in both groups, with no difference occurring between
3 groups. In addition, no between-group differences were noted in the
4 testosterone/epitestosterone ratio.
5

6 44. Tribulus Terrestris was combined with other alleged testosterone precursors
7 (androstenedione, dehydroepiandrosterone, saw palmetto, indole-3
8 carbionol, and chrysin) and supplemented daily for 8 weeks during a
9 program of resistance training in college-age men. The specific dosage of
10 TT was 1.35 grams/day. Results demonstrated that compared to the placebo
11 group, there were no significant increases in muscle strength and serum
12 testosterone. Therefore, the overall results of this study provided evidence
13 that the combination of the compounds did not result in increased serum
14 testosterone concentration, reduce the estrogenic effects of androstenedione,
15 and did not augment the adaptations to resistance training¹¹.
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21 RELIANCE AND INJURY

22 45. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
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24
25

26 ¹¹ Brown G, Vukovich M, Reifenrath T, Uhl N, Parsons K, Sharp R, King D.
27 Effects of anabolic precursors on serum testosterone concentrations and
28 adaptations to resistance training in young men. Int J Sport Nutr Exer Metab,
10:340-59, 2000.

1 46. When purchasing the Product, Plaintiff was seeking a product that had the
2 qualities described in Defendant's advertising, labeling and marketing.

3 47. Plaintiff read and relied on the deceptive claims contained herein.

4
5 48. Plaintiff believed the Product had the qualities he sought, but the Product
6 was actually unsatisfactory to Plaintiff for the reasons described herein.

7
8 49. Plaintiff paid more for the Product, and would have been unwilling to
9 purchase the Product at all, absent the false and misleading labeling
10 complained of herein. Plaintiff would not have purchased the Product
11 absent these claims and advertisements.

12
13 50. For these reasons, the Product was worth less, if it all, than what Plaintiff
14 paid for it.

15
16 51. Instead of receiving a product that had actual and substantiated healthful or
17 other beneficial qualities, the Product Plaintiff received was one that does
18 not provide the claimed benefits.

19
20 52. Plaintiff lost money as a result of Defendant's deceptive claims and
21 practices in that he did not receive what he paid for when purchasing the
22 Product.

23
24 53. Plaintiff altered his position to his detriment and suffered damages in an
25 amount equal to the amount he paid for the Product.

26
27 **CLASS ALLEGATIONS**

28 **CLASS ACTION COMPLAINT**

1 54. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

2 55. Plaintiff brings this action on his own behalf and as a Class Action Pursuant
3 to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks
4 certification of the following Classes:
5

6 California Class: All Persons in the State of California who have spent
7 money purchasing the Product from Defendant from four years from the
8 first-filed complaint in this action until the final disposition of this and any
9 and all related cases.

10 National Class: All Persons in the United States who have spent money
11 purchasing the Product from Defendant from four years from the first-filed
12 complaint in this action until the final disposition of this and any and all
13 related cases.

14 56. The abundance of Class Members renders joinder of all Class members
15 individually, in one action or otherwise, impractical.

16 57. This action involves questions of law and fact common to Plaintiff and
17 Class Members including:

18 (a) Whether Defendant violated the California Civil Code Section 1750 *et*
19 *seq.*;

20 (b) Whether Defendant violated the California Business & Professions Code
21 Section 17200 *et seq.*;

22 (c) Whether Defendant violated the False Advertising Law, Cal. Bus. &
23 Prof. Code Section 17500 *et seq.*;

24 (d) Whether Defendant breached an express warranty; and
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1 (e) Whether Plaintiff and Class Members sustained damages and, if so, the
2 proper measure of damages, restitution, equitable or other relief, and the
3 amount and nature of such relief.
4

5 Excluded from the Class is: (a) any Judge or Magistrate presiding over this action
6 and members of their families; (b) Defendant and any entity in which Defendant
7 has a controlling interest or which has a controlling interest in Defendant and its
8 legal representatives, assigns and successors of Defendant; and (c) all persons who
9 properly execute and file a timely request for exclusion from the Class.
10
11

12 58.*Numerosity*: The Classes are composed of thousands of persons
13 geographically dispersed throughout the State of California and the United
14 States, the joinder of whom in one action is impractical. Moreover, upon
15 information and belief, the Classes are ascertainable and identifiable from
16 Defendant's records.
17

18 59.*Commonality*: Questions of law and fact common to the Class exist as
19 to all members of the Class and predominate over any questions affecting
20 only individual members of the Class. These common legal and factual
21 issues include, but are not limited to the following:
22
23

24 (a) Whether Defendant violated the California Civil Code Section 1750 *et*
25 *seq.*;
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1 (b) Whether Defendant violated the California Business & Professions Code
2 Section 17200 *et seq.*;

3 (c) Whether Defendant violated the False Advertising Law, Cal. Bus. &
4 Prof. Code Section 17500 *et seq.*;

6 (d) Whether Defendant breached an express warranty; and

7 (e) Whether Plaintiff and Class Members sustained damages and, if so, the
8 proper measure of damages, restitution, equitable or other relief, and the
9 amount and nature of such relief.
10

11 60.*Typicality*: Plaintiff's claims are typical of the claims of the members of the
12 Class, as all such claims arise out of Defendant's conduct in manufacturing,
13 marketing, advertising, warranting and selling the Product, Defendant's
14 conduct in concealing material facts regarding the Product, Defendant's
15 false, fraudulent, unfair and misleading claims and Plaintiff's and Class
16 Members' purchasing the Product.
17

18 61.*Adequate Representation*: Plaintiff will fairly and adequately protect the
19 interests of the members of the Class and have no interests antagonistic to
20 those of the Class. Plaintiff has retained counsel experienced in the
21 prosecution of complex class actions, including consumer class actions
22 involving false and misleading advertising, product liability and product
23 design defects.
24

25 62.*Predominance and Superiority*: This class action is appropriate for
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1 certification because questions of law and fact common to the members of
2 the Class predominate over questions affecting only individual members,
3 and a Class action is superior to other available methods for the fair and
4 efficient adjudication of this controversy, since individual joinder of all
5 members of the Class is impracticable. Should individual Class Members
6 be required to bring separate actions, this Court and Courts throughout
7 California would be confronted with a multiplicity of lawsuits burdening the
8 court system while also creating the risk of inconsistent rulings and
9 contradictory judgments. In contrast to proceeding on a case-by-case basis,
10 in which inconsistent results will magnify the delay and expense to all
11 parties and the court system, this class action presents far fewer management
12 difficulties while providing unitary adjudication, economies of scale and
13 comprehensive supervision by a single Court.

CHOICE OF LAW

California's Substantive Law Applies to the Nationwide Class Members

19 63. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

20 64. California's substantive laws apply to the proposed nationwide Class, as set
21 forth in this complaint, because Plaintiff properly brings this action in this
22 District. A United States District Court sitting in diversity presumptively
23 applies the substantive law of the State in which it sits.
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1 65.The Court may constitutionally apply California's substantive laws to
2 Plaintiff and Nationwide Class Members' claims under the Due Process
3 Clause of the Fourteenth Amendment, § 1, and the Full Faith and Credit
4 Clause, Art. IV, § 1, of the United States Constitution. The claims asserted
5 by Plaintiff contain significant contact, or significant aggregation of
6 contacts, to ensure an adequate state interest and supports the choice of
7 California state law as just and reasonable.
8
9

10 66.Defendant conducts substantial business in California providing California
11 with an interest in regulating Defendant's conduct under California laws.
12 Defendant's decision to regularly conduct business in California and avail
13 itself of California's laws render the application of California law to the
14 claims at hand constitutionally permissible.
15
16

17 67.The injury to the Plaintiff and a significant number of proposed Class
18 Members by virtue of the misconduct alleged, occurred in California.
19 Plaintiff resides in California and purchased Defendant's Product in
20 California. A substantial number of the proposed Nationwide Class reside in
21 California and purchased Defendant's Product in California.
22
23

24 68.The application of California's laws to the proposed Nationwide Class
25 Members is also appropriate under California's choice of law rules because
26 California has significant contacts to the claims of the Plaintiff and the
27 Nationwide Class Members.
28

CAUSES OF ACTION

COUNT I

Violation of California Business and Professions

Code § 17200 *et seq.*

(On Behalf of Plaintiff and the Classes Against Defendant)

69. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

70. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or practice.”

71. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute “unlawful” business acts and practices in that Defendant’s conduct violates the False Advertising Law and the Consumer Legal Remedies Act.

72. Defendant’s conduct is further “unlawful” because it violates the Federal Food, Drug, and Cosmetic Act and its implementing regulations in at least the following ways:

- (1) Defendant’s deceptive statements violate 21 U.S.C. § 343(a), which deems food (including nutritional supplements) misbranded when the label contains a statement that is “false or misleading in any particular”;
- (2) Defendant’s deceptive statements violate 21 C.F.R. § 101.14(b)(3)(i), which mandates “substances” in dietary supplements consumed must contribute and retain “nutritional value” as defined under 21 C.F.R. § 101.14(a)(2)(3) when consumed at levels necessary to justify a claim.

1 73. Defendant's conduct is further "unlawful" because it violates The California
2 Sherman Food, Drug, and Cosmetic Law, which incorporates the provisions
3 of the Federal Food, Drug and Cosmetic Act.
4

5 74. The acts, omissions, misrepresentations, practices, and non-disclosures of
6 Defendant as alleged herein also constitute "unfair" business acts and
7 practices under the UCL in that Defendant's conduct is immoral,
8 unscrupulous, and offends public policy. Further, the gravity of Defendant's
9 conduct outweighs any conceivable benefit of such conduct.
10

11 75. The acts, omissions, misrepresentations, practices, and non-disclosures of
12 Defendant as alleged herein also constitute "fraudulent" business acts and
13 practices under the UCL in that Defendant's claims are false, misleading,
14 and have a tendency to deceive the Class and the general public.
15
16

17 76. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
18 enjoining Defendant from continuing to conduct business through unlawful,
19 unfair, and/or fraudulent acts and practices, and to commence a corrective
20 advertising campaign.
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22 77. Plaintiff further seeks an order for the disgorgement and restitution of all
23 monies from the sale of the Defendant's Product, which were acquired
24 through acts of unlawful, unfair, and/or fraudulent competition.
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COUNT II

Violation of California Legal Remedies Act

Cal. Civ. Code § 1750 *et seq.*

(On Behalf of Plaintiff and the Classes Against Defendant)

78. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

79. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's actions as set forth herein.

80. This cause of action is brought on behalf of all people of the State of California and the United States in accordance with the provisions of the California Legal Remedies Act (California Civil Code section 1770). Class members have lost money or property as a result of Defendant's actions as set forth herein.

81. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct of violation of the California Legal Remedies Act since Defendant is still representing that the Product has characteristics and abilities which are false and misleading.

82. Defendant's wrongful business practices have caused injury to Plaintiff and the Classes.

83. Pursuant to section 1770 of the California Civil Code, Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to engage

1 in unlawful, unfair, or deceptive business practices and any other act
2 prohibited by law, including those set forth in this Complaint.

3 84.As a result, Plaintiff, the Class, and the general public are entitled to
4 injunctive and equitable relief, restitution, and an order for the disgorgement
5 of the funds by which Defendant was unjustly enriched.
6

7 85.Plaintiff and the Classes also seek Punitive Damages since Defendant was
8 put on notice of its violations of the California Legal Remedies Act and took
9 no remedial actions.
10

11
12 **COUNT III**

13 **Violation of the False Advertising Law, Business and Professions**

14 **Code Sections 17500 *et seq.***

15 **(On Behalf of Plaintiff and the Classes Against Defendant)**

16 86.Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

17 87.In violation of Cal. Bus. & Prof. Code § 17500 *et seq.*, the advertisements,
18 labeling, policies, acts, and practices described herein were designed to, and
19 did, result in the purchase and use of the Product.
20

21 88.Defendant knew and reasonably should have known that the advertising,
22 marketing and labeling of the Product was untrue and/or misleading.
23

24 89.As a result, Plaintiff, the Class, and the general public are entitled to
25 injunctive and equitable relief, restitution, and an order for the disgorgement
26 of the funds by which Defendant was unjustly enriched.
27
28

COUNT IV

Breach of Express Warranty

(On Behalf of Plaintiff and the Classes Against Defendant)

90. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

91. Defendant made several different express warranties upon which Plaintiff relied in making his purchase, including the false and misleading claims contained herein.

92. In fact, there is no competent and reliable scientific evidence that support any of Defendant's claims, and actually there is competent and reliable scientific evidence refuting those claims.

93. The Plaintiff and Class Members received a product that did not provide the benefits Defendant's described in their labeling, advertising and marketing.

94. These facts constitute breaches of all applicable express warranties as alleged in this complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members demand judgment in their favor against the Defendant as follows:

- a. A determination that this action proceed as a class action and Plaintiff adequately represents the Class;
- b. An Order requiring Defendant to bear the cost of class notice;
- c. For compensatory, consequential and special damages in amounts proved, as well as statutory damages, including a return of all amounts paid for the Product sold by the Defendant to the Plaintiff and the Class Members;
- d. For interest thereon, in the maximum amount allowable under applicable law;
- e. For delay damages thereon, in the maximum amount allowable under applicable law;
- f. For costs of suit, in the maximum amount allowable under applicable law;
- g. For punitive damages, to the maximum amount permitted under applicable law;
- h. For an award of attorneys' fees and costs, to the maximum amount permitted under applicable law;
- i. For injunctive relief, restraining and enjoining the Defendant from continuing to use these deceptive sales tactics;

- 1 j. For restitution of the funds which were unjustly enriched by Defendant, at
2 the expense of Plaintiff and Class Members; and
3
4 k. For such other and further relief for the Plaintiffs as this Honorable Court
5 shall deem just.
6
7

8 DATED: September 3, 2013
9

10 By: /s/Jonathan Shub (SBN 237708)
11 jshub@seegerweiss.com.com
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14 Philadelphia, PA 19102
15 Telephone: (215) 564-2300
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Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff and the Class Members demand trial by jury as to all matters and issues triable.

DATED: September 3, 2013

By: /s/Jonathan Shub (SBN 237708)

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1515 Market St., Suite 1380

Philadelphia, PA 19102

Telephone: (215) 564-2300

Facsimile: (215) 569-1606

Attorneys for Plaintiffs

EXHIBIT A

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TESTOSTERONE SUPPORT

[Cyclo Bolan® NT](#)

[Cyclo Dex™](#)

[Cyclo Test™](#)

[Cyclo Tren™](#)

[Pro DHEA](#)

[Pro Tribulus](#)

PROTEIN

[Infinite Mass®](#)

[Infinite Pro® 100% Whey](#)

[Infinite Pro® 100% Whey Isolate](#)

[Whey Delite™](#)

RECOVERY

[BCAA](#)

[BCAA Powder](#)

[Cyclo REM®](#)

[Glutamine MTX™](#)

[Glutamine MTX™ Powder](#)

[MassPort™](#)

[Pro Z](#)

ESSENTIALS

[Alpha Lipoic Acid](#)

[Calcium Pyruvate](#)

[Joint Support](#)

[Multivitamin - Men](#)

[Multivitamin - Women](#)

[Ubiquinol](#)

[Vitamin B](#)

FIGHTER'S POWER

[Pro Fight™](#)

STACKS

[Build Muscle Stack](#)

[Burn Fat Stack](#)

[Endurance Stack](#)

[Pre-Fight Stack](#)

[Recovery and Health - Men](#)

[Recovery and Health - Women](#)

[Trial Stack](#)

INFINITE GEAR

[Cyclo Test T-Shirt](#)

[Dagger Shaker Cup](#)

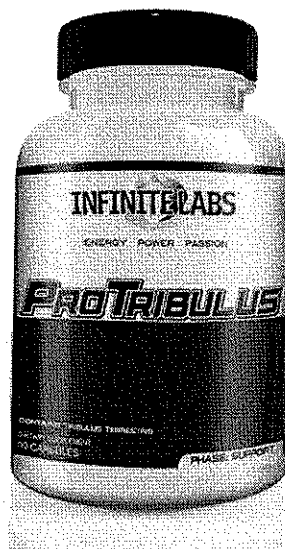
[Dagger T-Shirt](#)

[Fighter's Power T-Shirt](#)

[Infinite Labs Gym Bag](#)

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PRO TRIBULUS™

ADVANCED LH PRODUCTION SUPPORT*

PRO TRIBULUS™ HELPS TO:

- SUPPORT NATURAL TESTOSTERONE PRODUCTION*
- INCREASE LEAN MUSCLE NATURALLY*
- SUPPORT LH PRODUCTION*

90 capsules

\$20.82

\$12.49

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INSTANT SAVINGS!

Spend \$100 **SAVE 5%**
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90 capsules

Serving Size 1 Capsule
 Servings Per Container 90

Amount Per Serving

% DV*

Tribulus Extract (45% Saponins)

750mg

**

* (%) Percent Daily Values (DV) are based on a 2,000 calorie diet.

**Daily Value (DV) not established. Your Daily Values (DV) may be higher or lower depending on your calories needs.
Other ingredients:
Silicon Dioxide, Magnesium Stearate.

Directions:

Take 1-2 capsules daily, preferably with morning and evening meals, or as recommended by a health care professional.

Warnings:

Consult your physician before using this or any other dietary supplement. Do not use if you are pregnant or nursing. Not intended for use by persons under the age of 18. Do not use if tamper resistant seal is broken. Keep Out Of Reach Of Children. Store in a dry place and avoid excessive heat.

References:

Brown, GA, Vukovich, MS, Reifenhuth, TA, et al. (2000). Effects of anabolic precursors on serum testosterone concentrations and adaptations to resistance training in young men. *Int J Vitamin Nutr Res*. 10: 340-59.
Brown, GA, Vukovich, MD, Martini, ER, et al. (2001). Effects of androstenedione-herbal supplementation on serum sex hormone concentrations in 30- to 59-year-old men. *Int J Vitamin Nutr Res*. 71: 293-301.
Gauthaman, K, Adaiyan, PG, Prasad, RN (2002). Aphrodisiac properties of Tribulus terrestris extract (protodioscin) in normal and castrated rats. *Life Sci*. 71: 1385-96.
Gauthaman, K, Ganesan, AP (2008). The hormonal effects of Tribulus terrestris and its role in the management of male erectile dysfunction—an evaluation using primates, rabbit and rat. *Phytotherapy*. 15: 44-54.
Rogerson, S, Riches, CJ, Jennings, C, et al. (2007). The effect of five weeks of Tribulus terrestris supplementation on muscle strength and body composition during preseason training in elite rugby league players. *J Strength Cond Res*. 21: 348-53.
THEXTON.COM.AU. TribulusThe masculinity maker. Available at: http://www.thexton.com.au/index1.php?alias_articles&artid_380&temp_fib
Accessed August 10, 2005

PRODUCT INFORMATION | STACKS WELL WITH

Tribulus terrestris is a vine plant that is native to temperate climates in areas of southern Europe, southern Asia, Australia and Africa. It has a long history of uses, from promoting muscle development to supporting overall health. Tribulus has been suggested to stimulate levels of testosterone and luteinizing hormone (LH), while simultaneously supporting energy levels, recovery time and muscle gain. This effect is claimed to be mediated via steroidal saponins within the Tribulus, which allegedly block central testosterone receptors. The active compound in Tribulus is the saponin, protodioscin, which is similar in structure to dehydroepiandrosterone (DHEA).*

Many clinical studies involving Tribulus terrestris consumption in humans have produced equivocal results in regards to the effects it has on testosterone and LH levels. Regardless, Tribulus terrestris has been advocated to promote optimal hormonal levels that can potentially establish the anabolic environment necessary for muscle gain and development.*

EXHIBIT B

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Infinite Labs:

Pro Tribulus

The Athlete's Performance Aid!®
Supports Natural Testosterone Production!*

Supported Goal: Build Muscle

Main Ingredient: Tribulus

OVERALL RATING

Out of 10

9.4

Excellent

Read 11 Infinite Labs
Pro Tribulus Reviews.

Rate Product

Wish List

90 Capsules

\$20.82 \$12.37

In Stock Order

Manufacturer information:

Infinite Labs Products and
Information

This works well with:

Gold Standard 100%
Whey
Combat Powder
Phase8

Recommend 49 people recommend this. Be the first of your friends.

Infinite Labs Pro Tribulus Product Guide



What's in Infinite Labs Pro Tribulus?

90 Capsules

Serving Size 1 Capsule
Servings Per Container 90

Amount Per Serving	% DV
Tribulus Extract (45% Saponins)	750 mg †

† Daily Value (DV) not established

Other Ingredients:

Silicon Dioxide, Magnesium Stearate.

Directions For Pro Tribulus: Take 1-2 capsules daily, preferably with morning and evening meals, or as recommended by a health care professional.

Warnings: Consult your physician before using this or any other dietary supplement. Do not use if you are pregnant or nursing. Not intended for use by persons under the age of 18. Do not use if tamper resistant seal is broken. Keep Out Of Reach Of Children. Store in a dry place and avoid excessive heat.

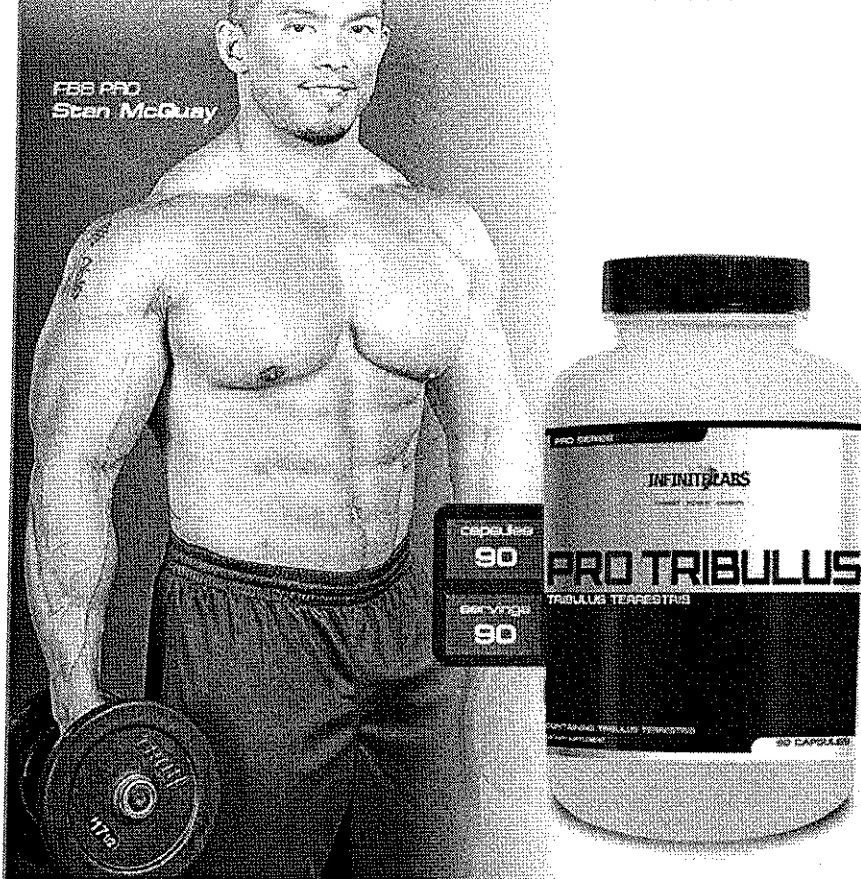
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GROWTH & RECOVERY THE ATHLETE'S PERFORMANCE AID*

FBI PRO
Stan McCrory



- SUPPORTS NATURAL TESTOSTERONE PRODUCTION*
- HELPS INCREASE LEAN MUSCLE NATURALLY*
- SUPPORTS LH PRODUCTION*

Tribulus terrestris is a vine plant that is native to temperate climates in areas of southern Europe, southern Asia, Australia and Africa. It has a long history of uses, from promoting muscle development to supporting overall health.* Tribulus has been suggested to stimulate levels of testosterone and luteinizing hormone (LH), while simultaneously supporting energy levels, recovery time and muscle gain.* This effect is claimed to be mediated via steroidal saponins within the Tribulus, which allegedly block central testosterone receptors.* The active compound in Tribulus is the saponin, protodioscin, which is similar in structure to dehydroepiandrosterone (DHEA).*

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References

1. Brown, GA, Vukovich, MS, Reifensrath, TA, et al. (2000). Effects of anabolic precursors on serum testosterone concentrations and adaptations to resistance training in young men. *Int J Vitamin Nutr Res*. 10: 340-59.
2. Brown, GA, Vukovich, MD, Martini, ER, et al. (2001). Effects of androstenedione-herbal supplementation on serum sex hormone concentrations in 30- to 59-year-old men. *Int J Vitamin Nutr Res*. 71: 293-301.
3. Gauthaman, K, Adalkan, PG, Prasad, RN (2002). Properties of Tribulus terrestris extract (protodioscin) in normal and castrated rats. *Life Sci*. 71: 1385-96.
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5. Rogerson, S, Riches, CJ, Jennings, C, et al. (2007). The effect of five weeks of Tribulus terrestris supplementation on muscle strength and body composition during preseason training in elite rugby league players. *J Strength Cond Res*. 21: 348-53.
6. THEXTON.COM.AU. Tribulus—The masculinity maker. Available at: http://www.thexton.com.au/index1.php?alias_articles&artid_380&temp_lib. Accessed August 10, 2005

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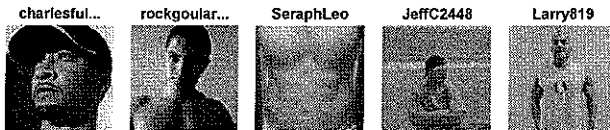
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Adela Garcia - Pink & White



More Info

Optimum Presents:
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